

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2743 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KAUSHIKKUMAR AAPABHAI CHAAVADA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioners

MR BY MANKAD, APP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/09/1999

ORAL JUDGEMENT

Heard learned counsel Ms. Banna Datta for the petitioners. This application is preferred under sec.482 of Cr.P.Code. The petitioners have prayed for the following reliefs in para-8 :-

8. The petitioners, therefore, pray that:-

(A) Be pleased to admit this application;

(B) Be pleased to quash the complaint vide
C.R. No. 119 of 1998 registered at Gorva
Police Station dated 01/06/1998;

(C) Pending admission and final disposal of
this application, be pleased to stay
further investigation of the complaint
registered at Gorva Police Station vide
C.R. No. 11 of 1998 dated 01/06/1998;

(D) xxx xxx xxx "

It is contended that a private complaint in the Court of learned Chief Judicial Magistrate, Jamnagar was filed by complainant Pravina @ Puja Kaushikkumar Apabhai Chvada, w/o petitioner no.1. The petitioners have prayed that the Court should decide the point of jurisdiction and if Court reaches to a conclusion that the learned Chief Judicial Magistrate, Jamnagar has no jurisdiction, then proceedings should be dropped. It was prayed that the criminal court having jurisdiction over territory in the district of Jamnagar was not authorised to issue any process or to take cognizance of the alleged offence. After hearing the parties, the learned Chief Judicial Magistrate granted the application exh.7 and held that the cognizance of the complaint is wrongly taken and original complaint was ordered to be returned back to the complainant with a direction to tender it before an appropriate Court having jurisdiction. Feeling aggrieved by the aforesaid order passed by the learned Chief Judicial Magistrate, present application is filed stating that despite the directions given by the learned Chief Judicial Magistrate, complainant approached the police station and filed a fresh complaint and has not cared to tender the original complaint before the appropriate court at Baroda. I would like to refer to the relevant sections referred to by the petitioner in the application exh.7 (reproduced herein below:-)

"177. Ordinary place of inquiry and trial .--
Every offence shall ordinarily be inquired into
and tried by a court within whose local
jurisdiction it was committed.

201. Procedure by Magistrate not competent to
take cognizance of the case.-- If the complaint
is made to a Magistrate who is not competent to
take cognizance of the offence he shall,--

- (a) if the complaint is in writing, return it
for presentation to the proper court with
an endorsement to that effect;
- (b) if the complaint is not in writing,
direct the complainant to the proper
court;'

A plain reading of the above sections, does not disclose that above sections confer any powers on the criminal court under which the Court can return the original complaint to the complainant to tender the very same complaint before the other criminal court. There are some provisions in the Civil Procedure Code, but the same have no bearing in the proceedings pending before the criminal court.

Submissions of Ms. Datta, learned counsel appearing for the petitioner on the point of revocation of the cognizance by the learned Chief Judicial Magistrate, Jamnagar are not cogent and convincing. The order passed by the learned Chief Judicial Magistrate, Jamnagar is self-explanatory wherein the learned Chief Judicial Magistrate has said that he has no jurisdiction to take the cognizance and, therefore, the order issuing process is revoked. The words used to the effect that revocation is temporary revocation indicates about the error committed by the learned Chief Judicial Magistrate, but the same will not go to the root of the matter. Since the complainant had already filed a complaint before Gorva Police Station at Baroda, as submitted by the learned counsel appearing for the petitioners. It can be said that the complainant has accepted the verdict of the learned Chief Judicial Magistrate and opted to approach the competent authority with her grievance against the accused persons and has prayed that offences committed by the petitioners (original accused) who were before the criminal court Jamnagar should be prosecuted. It was not obligatory on the part of the complainant to tender the very complaint before the learned Chief Judicial Magistrate, Baroda as the offences allegedly committed by accused no.2 being cognizable offences, aggrieved complainant or victim or anybody was authorised to institute a criminal case in any of the manner prescribed in Cr.P.Code. When the learned Chief Judicial Magistrate, Jamnagar was approached, one mode was adopted and after hearing the verdict of the criminal court at Jamnagar, the complainant has adopted another mode by filing complaint before the police station concerned. Merely because the order passed by the learned Chief Judicial Magistrate is not strictly complied with, criminal proceedings initiated before Gorva Police Station under whose jurisdiction alleged offences were

committed, cannot be quashed and set aside. A pointed query was raised that why criminal case instituted by the complainant should be quashed ? Learned counsel Ms. Datta could not logically and legally reply the same. It was submitted that once the cognizance by the criminal court at Jamnagar was taken and very complaint was ordered to be tendered before another court having jurisdiction viz. criminal court at Baroda, the fact of taking cognizance against the petitioners was in existence even on the day on which criminal complaint was filed before the police. This submission, having no legal bearing, should not be accepted and hence not accepted. The petitioners have not submitted, otherwise on merits, under which circumstances the proceedings initiated by the respondent complainant by filing criminal case that otherwise could have been instituted on a police report, should be turned down. In my view, there is no substance in the application and, therefore, same requires to be dismissed.

Learned counsel Mr. Gondalia, appearing for respondent no.2 is not called for.

In the result, application is dismissed. Rule is discharged. No costs.

16.09.1999 [C.K. BUCH, J]

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